



MEMORANDUM

Agenda Item No. 7(J)(1)(E)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: April 13, 2004

FROM: George M. Burgess
County Manager

SUBJECT: Resolution Approving A
Second Amendment to the
"Dadeland North Joint
Development Lease"

RECOMMENDATION

It is recommended that the Board approve a Second Amendment to the Dadeland North Joint Development Lease between Miami-Dade County and Green Dadeland Station, Ltd. and authorize the County Manager to execute same. The amendment allows for the settlement of disputed rent.

BACKGROUND

In April 1994, the Board approved execution of a 90-year lease (the "Lease") between Miami-Dade County through Miami-Dade Transit ("MDT") and Green Dadeland Station, Ltd. ("GDSL") for retail and residential development at the Dadeland North Metrorail Station site. At the same time, the Board approved the assignment of Phase I of the project to Dadeland Station Associates, Ltd. ("DSA"). The Lease commenced June 29, 1994 and was first amended in March 2003 to permit residential condominiums.

In late 1997, DSA and MDT staff had a disagreement over the interpretation of gross income. MDT maintained that DSA gross income should include fees paid by tenants for common area operating costs. DSA disputed this by maintaining that pass-through payments were merely reimbursement for expenses and did not constitute gross income.

In March 2001, DSA filed a suit seeking Declaratory Judgment asking the Circuit Court to interpret the Gross Income rental payment provision of the Lease. In August 2002, the trial judge ruled in favor of DSA. Miami-Dade County ("County") appealed the decision and in May 2003, the Appellate Court upheld the trial court's finding in favor of DSA.

The result of the Court's finding was that the County received \$184,836 less than the Minimum Rent due for the period from July 1998 to December 2002. Under the terms of the assignment between DSA and GDSL, GDSL is responsible for payment of the part of Minimum Rent that was not paid. Consequently, in September 2003, MDT billed GDSL for \$184,836 in addition to \$81,296 for January-September 2003 in back rent for a total of \$266,132.

Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners
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GDSL disputed their responsibility for owing that amount. After extensive negotiations, a settlement agreement was tentatively negotiated between MDT and GDSL in order to avoid the cost of litigation. The parties mutually agreed to the following, subject to Board approval:

GDSL agrees it owes the County \$266,132 in rent from July 1998 - September 2003.

- ❑ The County has already received \$7,185 for July-August-September 2003 rent for Phase B of the project. In July 2003, GDSL sold all of its interests in Phase B to another entity. That entity and GDSL are current in their rental payments.
- ❑ GDSL will pay the County \$30,207 upon Board approval of this item.
- ❑ The County will grant GDSL a credit of \$103,740 which includes a portion for (a) the cost of GDSL expenses for engineering services necessary for the preparation of grant applications which resulted in the County receiving \$2,000,000 in federal grants and for (b) the avoidance of costs and risks involved in litigation.
- ❑ The County may opt to (a) lease office space in GDSL project for rental value of \$125,000 or (b) accept payment in lieu of said space with payments at \$12,500 per year for ten (10) years, plus interest and applicable sales tax.

Summary (Parentheses below reflect cash/in-kind services received by County)

GDSL agrees it owes the County	\$266,132
Tentative negotiation settlement:	
County received	\$7,185
County will receive	<u>30,207</u>
Total	(\$37,392)
GDSL then owes	\$228,740
County gives credit of	(103,740)
GDSL then owes	\$125,000
County office space worth	(125,000 over 10 years)
Balance	-0-

FISCAL IMPACT

There is no negative fiscal impact as the County will recover its losses either in cash or through in-kind services benefiting the County.



Surface Transportation Manager

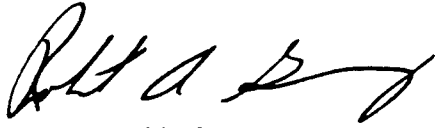


MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: April 13, 2004

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(J)(1)(E)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(J)(1)(E)
4-13-04

RESOLUTION NO. _____

RESOLUTION APPROVING A SECOND AMENDMENT TO
THE DADELAND NORTH JOINT DEVELOPMENT LEASE
BETWEEN MIAMI-DADE COUNTY AND GREEN
DADELAND STATION, LTD. AND AUTHORIZING THE
COUNTY MANAGER TO EXECUTE SAME AND EXERCISE
ALL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the
accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves a
Second Amendment to the Dadeland North Joint Development Lease between Miami-Dade
County and Green Dadeland Station, Ltd., in substantially the form attached hereto and made
a part hereof, and authorizes the County Manager to execute same for and on behalf of
Miami-Dade County and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner
_____ who moved its adoption. The
motion was seconded by Commissioner
_____ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson

Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro

Betty T. Ferguson

Joe A. Martinez

Dennis C. Moss

Natacha Seijas

Sen. Javier D. Souto

Jose "Pepe" Diaz

Sally A. Heyman

Jimmy L. Morales

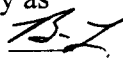
Dorrin D. Rolle

Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 13th day of April, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. 

By: _____
Deputy Clerk

Bruce Libhaber

**SECOND AMENDMENT TO THE DADELAND
NORTH JOINT DEVELOPMENT LEASE**

THIS SECOND AMENDMENT is made and entered into as of the ____ day of _____, 2004, by and among MIAMI-DADE COUNTY, a political subdivision of the State of Florida, having its principal office and place of business at 9th Floor, Stephen P. Clark Center, 111 N.W. 1st Street, Attn: Director, Miami-Dade Transit, Miami, Florida 33128 (the "Landlord"), GREEN DADELAND STATION, LTD., a Florida limited partnership, having an office and place of business at Dadeland Centre, 9155 South Dadeland Boulevard, Penthouse II-Suite 1812, Miami, Florida 33156 ("Tenant") and TOWERS OF DADELAND I, LLC., a Florida limited liability company, having an office and place of business at Dadeland Centre, 9155 South Dadeland Boulevard, Penthouse II-Suite 1812, Miami, Florida 33156 ("Towers").

RECITALS:

A. Landlord and Tenant entered into that certain Dadeland North Joint Development Lease dated April 19, 1994, a memorandum of which was recorded in Official Records Book 16454 at Page 2465 of the Public Records of Miami-Dade County, Florida (the "Original Lease").

B. Tenant assigned all of its right, title and interest in the Original Lease as it relates to Phase I, as defined in the Original Lease, to Dadeland Station Associates, Ltd., a Florida limited partnership ("Dadeland Station") by that certain Assignment dated April 19, 1994 and recorded in Official Records Book 16454, at Page 2477, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase I in favor of Dadeland Station (the "Phase I Lease").

C. Tenant assigned all of its right, title and interest in the Original Lease with respect to Phase B, as defined in the Original Lease, to Dadeland Vista Ltd., a Florida limited partnership ("Dadeland Vista"), by virtue of the Assignment dated December 4, 1997, recorded January 23, 1998 in Official Records Book 17951 at Page 4591 of the Public Records of Miami-Dade County, Florida, and re-recorded March 9, 1998 in Official Records Book 18009, at Page 341, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase B in favor of Dadeland Vista (the "Phase B Lease").

D. Tenant assigned all of its right, title and interest in Phase A, as defined in the Original Lease, to Dadeland Centre, Ltd., a Florida limited partnership ("Dadeland Centre") by Assignment dated November 30, 1999 and recorded December 15, 1999 in Official Records Book 18905, at Page 3105, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase A in favor of Dadeland Centre (the "Phase A Lease").

E. Landlord and Dadeland Centre entered into that certain Termination of Lease dated December 16, 1999, recorded January 21, 2000 in Official Records Book 18955, at Page 173, of the Public Records of Miami-Dade County, Florida, terminating the Phase A Lease.

F. Landlord, Tenant, and Dadeland Vista entered into that certain amendment to the Original Lease dated as of March 24, 2003, recorded August 25, 2003 in Official Records Book 21575, at Page 824 of the Public Records of Miami-Dade County, Florida (the "First Amendment") (the Original Lease as amended by the First Amendment is collectively the "Ground Lease")

G. Tenant assigned all of its right, title and interest in Phase II, as defined in the Ground Lease, to Towers by virtue of the Assignment dated as of December 1st, 2003 recorded January 2, 2004, in Official Records Book 21946 at page 4604 of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase II in favor of Towers (the "Phase II Lease").

H. Tenant is currently the tenant under the Ground Lease with respect to Phase III, as said terms are defined in the Ground Lease.

I. Towers is currently the tenant under the Phase II Lease, as hereinafter defined, with respect to Phase II.

J. Tenant, Towers and Landlord desire to modify and amend certain terms and provisions of the Ground Lease as it relates to Phase III and amend certain terms of the Phase II Lease, as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Second Amendment hereby agree as follows:

1. Recitals. The Recitals to this Second Amendment are true and correct and are hereby incorporated by reference and make a part hereof.

2. Defined Terms.

- (a) Any defined terms utilized in this Second Amendment but not defined herein shall have the meanings ascribed to said terms in the Ground Lease.
- (b) "Phase II Lease" means that assignment from Tenant to Towers of all of its right, title and interest in Phase II, as defined in the Ground Lease, by virtue of the Assignment dated as of December 1st, 2003, recorded January 2, 2004, in Official Records Book 21946 at page 4604 of the Public

Records of Miami-Dade County, Florida creating a separate leasehold estate in Phase II in favor of Towers.

3. Minimum Rent.

3.1 Landlord, Towers and Tenant acknowledge and agree that as of September 30, 2003, there was due and owing under the Ground Lease Two Hundred Fifty Eight Thousand Nine Hundred Forty Seven and No/100 Dollars (\$258,947.00) in Minimum Rent under the Ground Lease through September 30, 2003, as a result of adjustments made in the calculation of the Additional Rent payable with respect to the Phase I Lease (the "Recalculated Minimum Rent"). Landlord, Towers and Tenant agree that Tenant and Phase III under the Ground Lease and Towers and Phase II under the Phase II Lease shall be liable for the Recalculated Minimum Rent and the Recalculated Minimum Rent shall not be an obligation of Dadeland Station under the Phase I Lease or Dadeland Vista under the Phase B Lease.

3.2 Landlord acknowledges that Tenant has paid to Landlord the Minimum Rent due under the Ground Lease for the months of October, November and December, 2003, in the amount of Nineteen Thousand Nine Hundred Fourteen and 00/100 Dollars (\$19,914.00), together with the applicable sales tax thereon, which amount has been applied by Landlord against the Recalculated Minimum Rent obligation (excluding sales tax).

3.3 Tenant shall pay to Landlord Thirty Thousand Two Hundred Seven and No/100 Dollars (\$30,207.00), plus applicable sales tax, within thirty (30) days after this Second Amendment is executed by Landlord, which payment (excluding sales tax) shall be applied by Landlord against the Recalculated Minimum Rent obligation.

3.4 In full satisfaction of the obligation to pay the balance of the Recalculated Minimum Rent Landlord agrees to accept the following:

3.4.1 Landlord agrees to credit One Hundred Three Thousand Seven Hundred Forty and No/100 Dollars (\$103,740.00) against the Recalculated Minimum Rent.

3.4.2 Tenant agrees to enter into a space lease with Landlord ("the "Transit Lease") for space in a building to be constructed by Tenant on Phase III for approximately five hundred (500) rentable square feet of space (the "Premises") to be located in the easternmost building to be constructed on Phase III, immediately adjacent to the Dadeland North Metrorail Station Entrance. The Transit Lease shall be for a term of ten (10) years at a rental rate of Twenty and No/100 Dollars (\$20.00) per square foot, net, plus common area charges which shall not exceed Five and No/100 Dollars (\$5.00) per square foot. The Transit Lease will commence no later than January 1, 2008. The Transit Lease shall be in form and content customarily utilized by

Tenant for commercial space in the building. If Landlord and Tenant are unable to agree on the form of the Transit Lease despite their good faith efforts, Landlord may elect not to enter into the Transit Lease in which event the provisions of Section 3.4.2.5 shall apply.

3.4.2.1 Landlord and Tenant agree that the value of the Transit Lease to Landlord is One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) over the ten (10) year term or Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) per year. Tenant agrees to provide credit rent and credit common area charges (collectively the "Credit Rent") under the Transit Lease for its term subject to Section 3.4.2.2 below. Landlord agrees to apply the One Hundred Twenty-Five Thousand and No/100 Dollar (\$125,000.00) value from the Transit Lease against the Recalculated Minimum Rent.

3.4.2.2 In the event Tenant has not obtained a certificate of occupancy and delivered the Premises to Landlord by January 1, 2008, then Tenant shall begin making annual payments to Landlord in the amount of Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) per year commencing on January 5, 2008 and annually thereafter until Tenant obtains a certificate of occupancy and delivers the Premises to Landlord. The payments made by Tenant pursuant to this Section 3.4.2.2 shall be applied against the Recalculated Minimum Rent and shall reduce the amount of Credit Rent under the Transit Lease (i.e., if Tenant pays Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) to Landlord prior to the commencement of the Transit Lease, Landlord shall only be entitled to nine (9) years of Credit Rent under the Transit Lease).

3.4.2.3 In addition to the payment to be made by Tenant pursuant to Section 3.4.2.2 above, in the event Tenant has not obtained a certificate of occupancy and delivered the Premises to Landlord by January 1, 2008, Tenant shall pay interest, on a monthly basis, in arrears on the unpaid Recalculated Minimum Rent at the rate of interest announced from time to time by Citibank, N.A. as its "prime rate" plus one percent (1%) from January 1, 2004 until Tenant delivers the Premises to Landlord. By way of example, assuming the unpaid Recalculated Minimum Rent is \$125,000.00 on January 1, 2008, Tenant would pay interest on said amount, reduced by any principal payments under Section 3.4.2.2 until Tenant has obtained a certificate of occupancy and delivered the Premises to Landlord.

3.4.2.4 At any time prior to January 1, 2006, Tenant may elect to prepay the entire unpaid Recalculated Minimum Rent, by lump sum, plus applicable sales tax, without interest, in lieu of entering into the Transit Lease. At any time after January 1, 2006 and prior to the execution of the Transit Lease, Tenant may prepay the entire unpaid Recalculated Minimum Rent, by lump sum, plus applicable sales tax, and

interest accrued on the unpaid Recalculated Minimum Rent from January 1, 2004 in lieu of entering into the Transit Lease.

3.4.2.5 At any time prior to the execution of the Transit Lease, Landlord may elect not to enter into the Transit Lease, in which event Tenant shall pay to Landlord the sum of Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) per year, plus applicable sales tax and interest thereon from January 1, 2004, commencing on January 5, 2008 for ten (10) consecutive years.

4. Liability of Phase II. Towers acknowledges and agrees that Towers and Phase II shall be liable under the Phase II Lease for the payment of the Recalculated Minimum Rent if not paid by Tenant as herein provided, and Landlord shall have all rights and remedies available under the Phase II Lease for non-payment of rent if the Recalculated Minimum Rent is not paid by Tenant as herein provided.

5. Ratification.

Except as herein modified Tenant and Landlord ratify and reconfirm the provision of the Ground Lease. To the extent of a conflict between the terms and provisions of this Second Amendment and the Ground Lease, this Second Amendment shall control.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed by their duly authorized representatives on the day and year first hereinabove written.

LANDLORD:

MIAMI-DADE COUNTY, a political
Subdivision of the State of Florida

ATTEST:

BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

By: _____

Approved by County Attorney's Office
as to form and legal sufficiency

Signed in the presence of:

Susan A. Grad

Susan A. Grad
Print Name

Barbara Gonzalez

BARBARA GONZALEZ
Print Name

Susan A. Grad

Susan A. Grad
Print Name

Barbara Gonzalez

BARBARA GONZALEZ
Print Name

Tenant:

GREEN DADELAND STATION, LTD.,
a Florida limited partnership

BY: NORTH STATION,
INC., a Florida corporation, its
general partner

By: George R. Brown, Jr.
George R. Brown, Jr.,
President

Towers:

TOWERS OF DADELAND I, LLC, a
Florida limited liability company

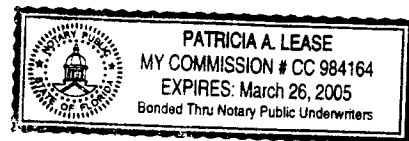
By: George R. Brown, Jr.
George R. Brown, Jr.
Manager

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 29 day of January, 2004, by George R. Brown, Jr., as President, of North Station, Inc., a Florida corporation, as general partner of Green Dadeland Station, Ltd., a Florida limited partnership, on behalf of the corporation and limited partnership. He/She is personally known to me or who has/have produced as identification and who did/did not take an oath.

Patricia A. Lease
Notary Public, State of Florida

My Commission Expires: 3/26/2005



STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 29 day of January, 2004, by GEORGE R. BROWN, JR., Manager of TOWERS OF DADELAND I, LLC, a Florida limited liability company, on behalf of limited liability company. He is personally known to me or has produced _____ as identification and did not take an oath.

(SEAL)

Print Name: Patricia A. Lease
Notary Public-State of Florida



(SEAL)

Witnesses:

By:

Name: Peter G. Lashum

Title: Senior Vice President

Print Name _____

Print Name _____

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 2ND day of February, 2004 by PETER G. LAPHAM, SENIOR VICE PRESIDENT of WACHOVIA BANK, NATIONAL ASSOCIATION, on behalf of the association. He/She has produced IS PERSONALLY KNOWN TO ME as identification.



Felicia S Hurtado
My Commission DD211217
Expires May 11, 2007

Notary Public-State of _____
Commission Number: _____